

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

# United States Patent Application

## COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled: **SELECTIVE SPACER TECHNOLOGY TO PREVENT METAL OXIDE FORMATION DURING POLYCIDIC REOXIDATION**.

The specification of which was filed on July 30, 1997 as application serial no. 08/902,809.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (see page 3 attached hereto).

I hereby claim foreign priority benefits under Title 35, United States Code, § 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

**No such applications have been filed.**

I hereby claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below.

**No such applications have been filed.**

I hereby claim the benefit under Title 35, United States Code, § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

**No such applications have been filed.**

I hereby appoint the following attorney(s) and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

Bianchi, Timothy E.	Reg. No. 39,610	Fogg, David N.	Reg. No. 35,138	Lundberg, Steven W.	Reg. No. 30,568
Billig, Patrick G.	Reg. No. 38,080	Forrest, Bradley A.	Reg. No. 30,837	Lynch, Michael L.	Reg. No. 30,871
Billion, Richard E.	Reg. No. 32,836	Harris, Robert J.	Reg. No. 37,346	Pappas, Lia M.	Reg. No. 34,095
Brennan, Thomas F.	Reg. No. 35,075	Hofmann, Rudolph P., Jr.	Reg. No. 38,187	Schwegman, Micheal L.	Reg. No. 25,816
Clark, Barbara J.	Reg. No. 38,107	Holloway, Sheryl S.	Reg. No. 37,850	Simboli, Paul B.	Reg. No. 38,616
Drake, Eduardo E.	Reg. No. 40,594	Klima-Silberg, Catherine I.	Reg. No. 40,052	Slifer, Russell D.	Reg. No. 39,838
Dryja, Michael A.	Reg. No. 39,662	Kluth, Daniel J.	Reg. No. 32,146	Viksins, Ann S.	Reg. No. 37,748
Embretson, Janet E.	Reg. No. 39,665	Lemaire, Charles A.	Reg. No. 36,198	Woessner, Warren D.	Reg. No. 30,440
Farney, W. Bryan	Reg. No. 32,651	Litman, Mark A.	Reg. No. 26,390		

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Schwegman, Lundberg, Woessner & Kluth, P.A. to the contrary.

Please direct all correspondence in this case to Schwegman, Lundberg, Woessner & Kluth, P.A. at the address indicated below:

P.O. Box 2938, Minneapolis, MN 55402  
Telephone No. (612)373-6900

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of joint inventor number 1 : Klaus Florian Schuegraf

Citizenship: United States of America

Residence: Tempe, AZ

Post Office Address: 2305 South Grandview Avenue  
Tempe, AZ 85282

Signature: \_\_\_\_\_

Klaus Florian Schuegraf

Date: \_\_\_\_\_

Full Name of joint inventor number 2 : Scott Jeffrey DeBoer

Citizenship: United States of America

Residence: Boise, ID

Post Office Address: 259 E. Twin Willow  
Boise, ID 83706

Signature: \_\_\_\_\_

Scott Jeffrey DeBoer

Date: Sept 18

Full Name of joint inventor number 3 : Randhir P.S. Thakur

Citizenship: India

Residence: Boise, ID

Post Office Address: 3545 South Bridgeport Place  
Boise, ID 83706

Signature: \_\_\_\_\_

Randhir P.S. Thakur

Date: Sept 18<sup>th</sup>, 1997

Full Name of inventor:

Citizenship:

Residence:

Post Office Address:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
  - (i) Opposing an argument of unpatentability relied on by the Office, or
  - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

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OFFICE OF PETITIONS  
A/C PATENTS

In re Application of :  
Schuegraf, DeBoer, and Thakur :  
Application No. 08/902,809 :  
Filed: July 30, 1997 :  
For: Selective Spacer Technology to :  
Prevent Metal Oxide Formation During :  
Polycide Reoxidation :

: DECISION ACCORDING STATUS  
: UNDER 37 CFR 1.47(a)

This is in response to the "Petition Under 37 CFR 1.47(a)," filed February 13, 1998.

The petition is granted.

Petitioner has established that joint inventor Schuegraf has refused to join in the filing of the above-identified application.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status and the Office of Initial Patent Examination is authorized to:

- (1) accept this application under Rule 1.47(a);
- (2) process the application with the inventors being Schuegraf, DeBoer, and Thakur, using the Declaration filed on February 13, 1998; and
- (3) mail a filing receipt with a filing date of July 30, 1997.

As provided in Rule 1.47(a), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the Declaration. Notice of the filing of this application will also be published in the Official Gazette.

Telephone inquiries regarding this decision should be directed to the undersigned at (703)306-3159.

A handwritten signature in black ink, appearing to read 'Karin Tyson', with a stylized flourish at the end.

Karin Tyson  
Senior Legal Advisor  
Special Program Law Office  
Office of the Deputy Assistant Commissioner  
for Patent Policy and Projects